

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Kevin Smith,
also known as Bar-None-Royal Blackness,

Plaintiff,

v.

Robert E. Ward, Dir. Div. of Operations;
James E. Sligh, Operations Coord. for
Div. of Operations; Jon E. Ozmint, Former
SCDC Director; Bernard McKie, Kirkland
Corr. Inst. Warden; Ann Gaston, Dir. of
Classification and Inmate Records;
Coaline Rushton, Div. Dir. of Security;
John Soloman, Program Manager Mental
Health Div.; William Byars, SCDC
Director; Michael J. Beinor, MD; Laurie F.
Bessinger, Former Kirkland Warden; in
their official and individual capacities,

Defendants.

C/A No. 9:13-1651-TMC

ORDER

Plaintiff, a state prisoner proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983. (ECF No. 1). Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* under 28 U.S.C. § 1915. (ECF No. 2), a Motion for Preliminary Injunction (ECF No. 3), and a Motion for Mental Examination (ECF No. 4).

On August 23, 2013, Magistrate Judge Bristow Marchant issued a Report and Recommendation ("Report") recommending that Plaintiff's Motion to Proceed *in forma pauperis* (ECF No. 2) be denied and that Plaintiff's Complaint, Motion for Preliminary Injunction, and Motion for an Order for Mental Examination (ECF Nos. 1, 3, 4) be dismissed without prejudice if he fails to timely pay the full filing fee because Plaintiff is subject to the "three strikes" rule of the Prison Litigation Reform Act. (ECF No. 17).¹ The Magistrate Judge provided Plaintiff a notice advising him of his right to file objections to the Report. (ECF No. 17 at 10). Plaintiff filed

¹In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), D.S.C., all pre-trial proceedings were referred to a Magistrate Judge.

objections to the Report on September 9, 2013. (ECF No. 20.)

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The court is obligated to conduct a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

As noted above, Plaintiff filed objections to the Report which the court has carefully reviewed. However, Plaintiff's objections provide no basis for this court to deviate from the Magistrate Judge's recommended disposition.

After a thorough review of the Report and the record in this case, the court adopts the Magistrate Judge's Report (ECF No. 17) and incorporates it herein. It is therefore **ORDERED** that Plaintiff's Motion for Leave to Proceed *in forma pauperis* (ECF No. 2) is **DENIED** and that Plaintiff shall have twenty-one (21) days from the date of this order to pay the \$400.00 filing fee. It is further **ORDERED** that, in the event Plaintiff fails to timely pay the filing fee, the Complaint, Motion for Preliminary Injunction, and Motion for an Order for Mental Examination (ECF Nos. 1, 3, 4) shall be **DISMISSED** without prejudice and without service upon Defendants, and the Clerk

enter final judgment.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
September 17, 2013

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.